

REMARKS

Prior to entry of this amendment, claims 1-14 are pending in this application. By this Amendment, claims 1, 3, 4, 7 and 8 are canceled and claims 2, 5, 6 and 9-14 are amended. The subject matter of the amendments to claims 2, 5, 6 and 9-14 is fully supported in the specification as filed, and thus, no new matter is added by the amendments.

Applicants appreciate the Examiner's acknowledgement of allowable subject matter in claims 9-14.

Claims 2, 5, 6 and 9-14 are presented for further prosecution on the merits.

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and following remarks.

In the outstanding Office Action, claims 1-14 are objected to for various informalities. Claims 1, 3, 4, 7 and 8 are canceled, and claims 2, 5, 6 and 9-14 have been amended responsive to the objections. If any further amendments are necessary, the Examiner is requested to contact Applicants' undersigned representative at the telephone number listed below.

In the outstanding Office Action, claims 1, 3-4, and 6-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Padovani (U.S. 6,574,211 hereinafter "Padovani"). It is noted that claims 1, 3-4 and 7-8 have been canceled and claim 6 has been amended. To the extent that the rejection remains applicable to claim 6, as pending, Applicants hereby traverse the rejection, as follows.

In the outstanding Office Action, the Examiner fails to indicate grounds for rejecting claim 6. Claim 6 recites, in part:

the signal quality is defined by the difference $\Delta S = S_1 - S_{max}$, where S_1 is level of pilot signal transmitted by the base station to which the mobile station belongs received at said mobile station, S_{max} is the highest level among S_2 through S_n of the pilot signals from adjacent base stations received at said mobile station

Padovani does not appear to disclose or suggest this limitation of claim 6. Rather, Padovani discloses defining forward link quality by a signal to noise and interference ratio (C/I) of the forward link pilot signals and selects the base station having the best link based on present and past C/I measurements. Padovani bases the forward link signal quality on the C/I of the forward link pilot and not on the level of the pilot signal. Thus, it is respectfully submitted that claim 6 is patentably distinct over Padovani and in condition for allowance. Accordingly, a notice of Allowability is earnestly solicited.

In the outstanding Office Action, claims 2 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani. It is noted that claims 2 and 5 have been amended to be in independent form including all of the limitations of the base claim and any intervening claims. To the extent that the rejection remains applicable to the claims currently pending, Applicants hereby traverse the rejection, as follows.

In making this rejection, the Office Action admits that Padovani fails to disclose that the signal quality is defined by a distance between the base station and the mobile station, as recited in claim 2, and that the signal quality is defined by distance between the mobile station and a border of cells of the base station to which the mobile station belongs and an adjacent base station, as recited in claim 5.

The Office Action takes the position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that distance would have been a factor affecting propagation loss and therefore signal quality in a mobile station, with the motivation of improving utilization of the forward and reverse link capacity in the data communication system. *See the Office Action of July 15, 2004, at p. 4.*

However, Padovani appears to disclose at col. 3, lines 31-42, that good "C/I distribution can only be achieved if, at any instant in time and at any location, the mobile station is served by the best base station which is defined as that achieving the largest C/I value, *regardless of the physical distance to each base station.*" Emphasis added. Padovani goes on to state that if a mobile station was to communicate only via the closest base station, the signal-to-noise-and-interference-ratio (C/I) could be substantially degraded. Thus, Padovani teaches away from the invention as recited in claims 2 and 5.

Further, it is respectfully submitted that the Office Action appears to fail to set forth a *prima facie* case of obviousness. In order to establish obviousness, there must be a suggestion or motivation in the reference to do so. Since Padovani teaches that defining signal quality by distance between a base station and a mobile station may cause degradation of the C/I of the signal, and that the best base station is one that achieves the largest C/I value, *regardless of the physical distance to each base station,* it is respectfully submit that there is no motivation in Padovani to make the modification as suggested in the outstanding Office Action. Namely, the is no motivation in Padovani to base the signal quality on distance between a mobile station and a base station, as in claim 2, or between a mobile station and a border of cells of the base station to which the mobile station belongs and an adjacent base station, as in claim 5. Thus, Applicants respectfully submit

that the invention as recited in claims 2 and 5 is neither anticipated nor rendered obvious by Padovani. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

In the outstanding Office Action, claims 9-14 are objected to for various informalities and for being dependent from a rejected base claim. Claims 9-14 have been amended responsive to these objections, and to be in independent form including all of the limitations of the base claim and any intervening claims. Thus, claims 9-14 are in condition for allowance and a notice to such effect is respectfully requested.

Conclusion

Applicants respectfully submit that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event that this paper is not considered to be timely filed, Applicants respectfully petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 01-2300, referring to client-matter number 100186-00010.

Respectfully submitted,



Michele L. Connell
Registration No. 52,763

Customer No. 004372
AREN'T FOX PLLC
1050 Connecticut Avenue, N.W.,
Suite 400
Washington, D.C. 20036-5339
Tel: (202) 857-6104
Fax: (202) 857-6395

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